

## Message Text

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ACTION SS-25

INFO OCT-01 ISO-00 /026 W

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R 241850Z APR 75

FM USMISSION GENEVA

TO SECSTATE WASHDC 2369

INFO AMEMBASSY MUSCAT

S E C R E T GENEVA 2905

EXDIS

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: OMANI POSITION ON STRAITS

REF: MUSCAT 486

1. USG HAS NOT TABLED OR PUBLICLY ENDORSED ANY NEW DRAFT ARTICLES THIS SESSION ON STRAITS. HOWEVER, PRIVATE NEGOTIATING GROUP, LED BY UK AND FIJI, AND INCLUDING MANY MODERATE DEVELOPING COUNTRIES, INCLUDING BAHRAIN, UAE, LEBANON, AND KENYA, HAS DEVELOPED CONSOLIDATED SINGLE TEXT ON STRAITS WHICH WE EXPECT WILL BE INCORPORATED VIRTUALLY INTACT INTO THE CHAIRMAN'S SINGLE NEGOTIATING TEXT OF DRAFT LOS TREATY EXPECTED TO RESULT FROM GENEVA SESSION.

2. US HAS SERIOUS OBJECTIONS TO CERTAIN PORTIONS OF UK-FIJI TEXT, BUT IN RELATION TO CONCERNS CITED REFTTEL, HAS PRIVATELY INDICATED THAT FOLLOWING ARTICLE WOULD BE ACCEPTABLE TO USG. BEGIN QUOTE FROM UK-FIJI TEXT:

### ARTICLE 2

1. SHIPS AND AIRCRAFT, WHILE EXERCISING THE RIGHT OF TRANSIT PASSAGE SHALL:

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(A) PROCEED WITHOUT DELAY THROUGH THE STRAIT;

(B) REFRAIN FROM ANY ACTIVITIES OTHER THAN THOSE INCIDENT TO THEIR NORMAL MODES OF CONTINUOUS AND EXPEDITIOUS TRANSIT UNLESS RENDERED NECESSARY BY FORCE MAJEURE OR BY DISTRESS;

(C) REFRAIN FROM ANY THREAT OR USE OF FORCE IN VIOLATION OF THE CHARTER OF THE UNITED NATIONS AGAINST THE TERRITORIAL INTEGRITY OR POLITICAL INDEPENDENCE OF AN ADJACENT STRAITS STATE;

(D) COMPLY WITH OTHER RELEVANT PROVISIONS OF THIS CHAPTER.

2. SHIPS IN TRANSIT SHALL:

(A) COMPLY WITH GENERALLY ACCEPTED INTERNATIONAL REGULATIONS, PROCEDURES AND PRACTICES FOR SAFETY AT SEA, INCLUDING THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA;

(B) COMPLY WITH GENERALLY ACCEPTED INTERNATIONAL REGULATIONS, PROCEDURES AND PRACTICES FOR THE PREVENTION AND CONTROL OF POLLUTION FROM SHIPS.

3. AIRCRAFT IN TRANSIT SHALL:

(A) OBSERVE RULES OF THE AIR ESTABLISHED BY THE INTERNATIONAL CIVIL AVIATION ORGANIZATION UNDER THE CHICAGO CONVENTION AS THEY APPLY TO CIVIL AIRCRAFT; STATE AIRCRAFT WILL NORMALLY COMPLY WITH SUCH SAFETY MEASURES AND WILL AT ALL TIMES OPERATE WITH DUE REGARD FOR THE SAFETY OF NAVIGATION;

(B) AT ALL TIMES MONITOR THE RADIO FREQUENCY ASSIGNED BY THE APPROPRIATE INTERNATIONALLY DESIGNATED AIR TRAFFIC CONTROL AUTHORITY OR THE APPROPRIATE INTERNATIONAL DISTRESS RADIO FREQUENCY. END QUOTE.

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3. YOU SHOULD BE CAREFUL NOT TO IMPLY USG ACCEPTANCE OR ENDORSEMENT OF UK-FIJI STRAITS PACKAGE. YOU MAY, HOWEVER, INDICATE THAT USG INTENT HAS ALWAYS BEEN TO SECURE A RIGHT OF TRANSIT, I.E., TO GO FROM ONE SIDE OF THE STRAIT TO THE OTHER IN THE NORMAL MODE FOR THE PARTICULAR VESSEL OR AIRCRAFT, THAT THERE NEVER WAS ANY INTENT ON OUR PART TO SECURE A RIGHT TO CONDUCT WAR EXERCISES

OR SIMILAR ACTIVITIES IN STRAITS, AND THAT, IN OUR VIEW, THE UK-FIJI ARTICLE, QUOTED ABOVE, LIMITS THE RIGHT OF TRANSIT IN AN APPROPRIATE AND EFFECTIVE MANNER.

4. FYI - IT IS LIKELY THAT CHAIRMAN'S DRAFT ON INNOCENT PASSAGE WILL INCORPORATE A MORE DETAILED LIST OF PROHIBITED ACTIVITIES APPLICABLE TO TERRITORIAL SEAS GENERALLY. WE ARE OPPOSED ANY TRANSPOSITION THIS MORE DETAILED LIST TO THE STRAITS CHAPTER. END FYI.

5. USG IS WILLING TO ACCEPT STRICT LIABILITY TO STRAITS STATE FOR POLLUTION DAMAGE CAUSED TO IT THROUGH VIOLATION OF TREATY REGULATIONS GOVERNING UNIMPEDED PASSAGE BY SOVEREIGN IMMUNE VESSELS. USG IS, IN GENERAL, MORE WILLING TO BE FORTHCOMING ON THIS ISSUE THAN OTHER MARITIME STATES. IT IS TOO EARLY TO PREDICT SHAPE OF FINAL TEXT ON POLLUTION LIABILITY, BUT IF THIS IS MAJOR OMANI CONCERN, THE MOST EFFECTIVE WAY TO INFLUENCE THE OUTCOME WOULD BE FOR THEM TO MODERATE THEIR EXTREME POSITION SUFFICIENTLY TO ALLOW THEM TO PARTICIPATE IN MEANINGFUL NEGOTIATIONS ON STRAITS ISSUE. FYI - STRAITS ISSUE MAY COME UP FOR DISCUSSION IN INFORMAL CONSULTATIVE GROUP OF COMMITTEE II ON 28 APRIL. IF OMAN WISHED TO SIGNAL ITS WILLINGNESS TO NEGOTIATE ON REALISTIC BASIS, THIS WOULD BE EXCELLENT REPEAT EXCELLENT OPPORTUNITY TO REFRAIN FROM JOINING THE EXTREMIST CHORUS, WHICH WE NOW EXPECT WILL BE LED BY SPAIN, PRC, AND OMAN. END FYI. DALE

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## Message Attributes

**Automatic Decaptioning:** Z  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** INNOCENT PASSAGE, STRAITS, FOREIGN POLICY POSITION  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 24 APR 1975  
**Decaption Date:** 28 MAY 2004  
**Decaption Note:** 25 YEAR REVIEW  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** GolinoFR  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
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**Enclosure:** n/a  
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**Previous Channel Indicators:** n/a  
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**Previous Handling Restrictions:** EXDIS  
**Reference:** 75 MUSCAT 486  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** GolinoFR  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 18 JUN 2003  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <18 JUN 2003 by BoyleJA>; APPROVED <19 JUN 2003 by GolinoFR>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
05 JUL 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** LOS: OMANI POSITION ON STRAITS  
**TAGS:** PLOS  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006